

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Sprint Communications Corporation |) | IC No. 02-S80030 |
| |) | |
| Complaint Regarding |) | |
| Unauthorized Change of |) | |
| Subscriber's Telecommunications Carrier |) | |

ORDER ON RECONSIDERATION

Adopted: January 29, 2007

Released: January 29, 2007

By the Deputy Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we deny a Petition for Reconsideration filed by Sprint Communications Corporation (Sprint)¹ asking us to reverse a finding that Sprint changed Complainant's telecommunications service provider in violation of the Commission's rules by failing to obtain proper authorization and verification.² On reconsideration, we affirm that Sprint's actions violated the Commission's carrier change rules.³

I. BACKGROUND

2. In December 1998, the Commission adopted rules prohibiting the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁴ The rules were designed to take the profit out of slamming.⁵ The Commission applied the rules to all wireline carriers,⁶ and modified its existing requirements for the authorization and verification of preferred carrier changes.⁷

¹ See Petition for Reconsideration of Sprint Communications Co. L.P. (filed May 23, 2003) (*Petition*) seeking reconsideration of *Sprint Communications Corporation*, 18 FCC Rcd 8275 (2003) (*Division Order*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (CGB).

² See *Division Order*, 18 FCC Rcd 8275 (2003).

³ See 47 C.F.R. §§ 64.1100 – 64.1190.

⁴ See *id.*; see also 47 U.S.C. § 258(a).

⁵ See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1512, para. 4 (1998) (*Section 258 Order*). See also *id.* at 1518-19, para. 13.

⁶ See *id.* at 1560, para. 85. CMRS providers were exempted from the verification requirements. See *Section 258 Order* at 1560-61, para. 85.

⁷ See *Section 258 Order*, 14 FCC Rcd at 1549, para. 66.

3. The rules require that a submitting carrier receive individual subscriber consent before a carrier change may occur.⁸ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁹

4. The Commission also adopted liability rules for carriers that engage in slamming.¹⁰ If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.¹¹ Where the subscriber has paid charges to the unauthorized carrier, the unauthorized carrier must pay 150% of those charges to the authorized carrier, and the authorized carrier must refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.¹²

5. The Commission received a complaint on August 2, 2002, alleging that Complainant's telecommunications service provider had been changed from its authorized carrier to Sprint without Complainant's authorization.¹³ Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹⁴ CGB notified Sprint of the complaint.¹⁵ In its response, Sprint stated that it verified Complainant's order using third party verification (TPV), and it provided a recording of that verification.¹⁶ In the *Division Order*, the Division determined that Complainant did not respond to the verifier's query as to whether Complainant wanted to switch his service and, thus, found that Sprint failed to produce clear and convincing evidence that Complainant authorized a carrier change.¹⁷ Sprint seeks reconsideration of the *Division Order*.

II. DISCUSSION

6. Based on the record before us, we affirm the *Division Order* and deny Sprint's *Petition*. Commission rules state that a third party verifier must elicit from the subscriber confirmation that the

⁸ See 47 C.F.R. § 64.1120. See also 47 U.S.C. § 258(a).

⁹ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

¹⁰ See 47 C.F.R. §§ 64.1140, 64.1160-70.

¹¹ See 47 C.F.R. §§ 64.1140, 64.1160 (any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change).

¹² See 47 C.F.R. §§ 64.1140, 64.1170.

¹³ Informal Complaint No. IC 02-S80030, filed August 2, 2002.

¹⁴ 47 C.F.R. § 1.719 (procedures for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹⁵ See Notice of Informal Complaint No. IC 02-S80030 to Sprint from the Deputy Chief, CGB, dated September 13, 2002.

¹⁶ Sprint's Response to Informal Complaint No. IC 02-S80030, received October 22, 2002.

¹⁷ See *Division Order*, 18 FCC Rcd 8275 (2003).

subscriber wants to make the carrier change.¹⁸ In its *Petition*, Sprint states that the TPV agent identifies himself and says, “I would like to confirm your Sprint order for long distance on your home phone number...” Sprint claims it is clear the customer is being asked to confirm the switch of his long distance service to Sprint.¹⁹ According to Sprint, the part of the TPV the Commission found problematic involves the specific language used to verify the request for Sprint long distance service for Complainant’s telephone line.²⁰

7. On the TPV recording, Sprint’s verifier asks the consumer, “The number you are authorizing Sprint to switch from your current carrier for your long distance on your home phone is [Complainant’s phone number]. Is this correct?” The person on the line answers, “Yea that’s the phone number for my house.” Sprint argues that “Yea” evidences the consumer’s confirmation both that the telephone number was the consumer’s number and that the customer wanted to switch the phone number to Sprint.²¹ Sprint claims, “That’s the phone number for my house,” is additional, random information the consumer provides and does not relate to “Yea.”²² After reviewing the tape, we disagree with Sprint’s interpretation. The statement, “Yea that’s the phone number for my house” is spoken without a pause that would denote two independent statements. In fact, the evidence points to the opposite interpretation, *i.e.*, the person on the recording is making one statement that confirms only that the number spoken by the verifier is Complainant’s and is not also a confirmation of a desire to switch telephone service providers.

8. In addition, Sprint argues that the customer gave his consent two more times when the verifier asks, “Is that correct?” and “Is that a yes?”²³ However, it is clear from the recording that the customer’s answers to the follow-up questions only confirmed the same information regarding his telephone number. Sprint also argues that the conversation between the customer and the verifier, during which the verifier mentions Sprint’s 800 number, indicates that the customer wanted to switch his service to Sprint.²⁴ We disagree. The person might, for example, have wanted to call the 800 number for additional information to help him decide whether to switch service.²⁵ We continue to believe that Sprint did not provide “clear and convincing” evidence of an authorized carrier change as required by the Commission’s rules. Accordingly, we deny Sprint’s *Petition*.

III. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361, 1.106 and 1.719 of the Commission’s

¹⁸ See 47 C.F.R. §§ 64.1120(c)(3)(iii).

¹⁹ See *Petition* at 2.

²⁰ See *id.*

²¹ *Id.*

²² *Id.*

²³ See *Petition* at 2.

²⁴ See *id.* at 3.

²⁵ After the verifier thanked the person on the recording, the latter responded, “Yeah so the phone, I can call right now, right?” The verifier responded, “That I don’t know, sir.” The person on the recording: “Uh, you don’t know?” Verifier: No, sir, the 800 number I gave you, did you write that down?” The person on the recording: “Oh, no, hold on please. OK, it’s ah, 1-800...” Verifier: “Yes, 877.” The person on the recording then repeats what the verifier stated regarding the 1-800 phone number.

rules, 47 C.F.R. §§ 0.141, 0.361, 1.106, 1.719, the petition for reconsideration filed by Sprint on May 23, 2003, IS DENIED.

10. IT IS FURTHER ORDERED that this Order is effective UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel, Chief
Consumer & Governmental Affairs Bureau